

## SECTION 19: NONCONFORMING SITUATIONS

### Section 19.0: Purposes

This section is intended to limit the number and extent of nonconforming situations by prohibiting or limiting their enlargement, their reestablishment after abandonment, and the alteration or restoration after destruction. The overall purpose is the gradual elimination of nonconforming uses or conversion to conforming uses in order to further the goals of the Coconino County General Plan, special area plans, and this Ordinance.

### Section 19.1: Definitions

NONCONFORMING SITUATION shall mean a situation that occurs when, on the effective date of adoption of this Ordinance or a previous ordinance or on the effective date of a Zoning Ordinance text amendment or a zoning map change, an existing lot or structure or use of an existing lot or structure does not conform to one or more of the regulations applicable to the district in which the lot or structure is located. A nonconforming situation may be any of the following.

NONCONFORMING USE shall mean a use or activity which was lawful prior to the adoption, revision, or amendment of the Zoning Ordinance or zoning map, but which is unlawful by the use regulations applicable to the district in which the property is located.

NONCONFORMING LOT shall mean a lot, the area or dimensions of which was lawful prior to the adoption, revision, or amendment of the Zoning Ordinance or zoning map, but which fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

NONCONFORMING SIGN shall mean any sign lawfully existing on the effective date of the Zoning Ordinance or any amendment thereto which fails by reason of such adoption or amendment to conform to all standards and regulations of the Ordinance.

NONCONFORMING STRUCTURE OR BUILDING shall mean a structure or building the size, dimensions, or location of which was lawful prior to the adoption, revision, or amendment of the Zoning Ordinance but which fails by reason of such adoption, revision, or amendment to conform to the present regulations applicable to the zone in which the property is located.

NONCONFORMING PROJECT shall mean any structure, development, or undertaking that is incomplete on the effective date of this Ordinance or any amendment thereto or of any zoning map change and which would be inconsistent with any regulation applicable to the zone in which it is located if completed as proposed or planned.

### Section 19.2: Continuation of Nonconforming Situations

A. Nonconforming situations that were lawful when created or established may be continued.

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Section 19.3: Completion of Nonconforming Projects

- A. Nonconforming projects which have been approved or permitted before the effective date of this Ordinance or any amendment thereto or of any zoning map change may be completed in accordance with the terms of their permits, so long as these approvals or permits were validly issued and remain unrevoked and unexpired.
- B. Nonconforming projects approved by conditional use permit shall be allowed to be completed so long as the use is commenced or a building permit is obtained within one (1) year of approval as per Section 19.2-11.
- C. Applicable zoning regulations for a nonconforming project are those in place at the time of a building permit application or at the time of application for a zone change or conditional use permit.
- D. For projects designed to be completed in stages, construction may be completed according to regulations in effect on the date of approval pursuant to schedules of development approved by the Planning and Zoning Commission or Board of Supervisors.

Section 19.4: Nonconforming Lots

- A. Lots that were legally established and in conformance with the Zoning Ordinance when created shall be considered usable.
- B. When the use proposed for a nonconforming lot is one that conforms in all other respects but the applicable setback requirements cannot be reasonably complied with, the Board of Adjustment may grant variances from the applicable setback requirements if it finds that:
  - 1. The property cannot reasonably be developed for the use proposed without such variance,
  - 2. The variance is necessitated by the size and shape of the nonconforming lot, and
  - 3. The property can be developed as proposed without any significantly adverse impact on surrounding properties or the public health or safety.
- C. For the purpose of Section B above, compliance with applicable building setback requirements is not reasonable possible if a building that serves the minimal needs of the use proposed for the nonconforming lot cannot practicably be constructed and located on the lot in conformity with such setback requirements. However, mere financial hardship does not constitute grounds for finding that compliance is not reasonably possible.
- D. This section only applies to undeveloped nonconforming lots. A lot is undeveloped if it

has no substantial structures on it. A change in use of a developed nonconforming lot may be accomplished in accordance with Section 19.9 below.

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**Section 19.5: Nonconforming Signs**

- A. Subject to the remainder of this Section, nonconforming signs that were lawful when established may be continued.
- B. No nonconforming sign may be enlarged or altered in such a manner as to increase the extent of the nonconformity nor may illumination be added to any nonconforming sign.
- C. A nonconforming sign may not be moved or replaced except to bring the sign into complete conformity with this Ordinance.
- D. Restoration of a damaged sign may be accomplished in accordance with Section 19.8 below.
- E. The message of a nonconforming sign may be changed so long as this does not create any new nonconformities (for example, by creating an off-premise sign where such sign would not be allowed).
- F. Routine maintenance and repairs may be done so long as the cost of such work does not exceed 50 percent of the value of such sign within any 12 month period.
- G. If a nonconforming sign advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that has not been offered or conducted for a period of 180 days, that sign shall be considered abandoned and shall be removed within 30 days after such abandonment. If the business is resumed following the abandonment, all signs shall conform to this Ordinance.
- H. If a nonconforming billboard remains blank for a continuous period of 180 days, that billboard shall be deemed abandoned and shall be removed within 30 days after such abandonment. For the purpose of this Section, a sign is blank if:
  - 1. It advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that is no longer operating or being offered or conducted; or
  - 2. The advertising message it displays becomes illegible in whole or substantial part; or
  - 3. The advertising copy paid for by a party other than the sign owner or promoting an interest other than the rental of the sign has been removed.

#### Section 19.6: Nonconforming Mobile Homes and Mobile Home Parks

- A. Within nonconforming mobile home parks, mobile homes may be replaced subject to the following:
  - 1. The total number of spaces in the mobile home park shall not be increased over the number existing at the time the park became nonconforming;
  - 2. There shall be a minimum 10' front setback; and
  - 3. There shall be a minimum 10' spacing between mobile homes.
  - 4. Setbacks around the perimeter of the park shall not be reduced from those existing at the time the park became nonconforming.

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#### Section 19.6: Nonconforming Mobile Homes and Mobile Home Parks (Continued)

- B. Expansions of nonconforming mobile home parks may only be accomplished through rezoning to the Mobile Home Park Zone for the proposed expansion area.
- C. Individual nonconforming mobile homes on discrete parcels may only be replaced with the granting of a conditional use permit as described in Section 19.9 below. Minor additions or improvements, such as decks, porches, and cabanas with a cost up to 25 percent of the appraised value of the nonconforming mobile home, are permitted.

#### Section 19.7: Extension or Enlargement of Nonconforming Situations

- A. Except as otherwise specifically allowed in this Section, no increase in the extent of nonconformity of a nonconforming situation is permitted. In particular, no nonconforming use shall be enlarged or extended in such a way as to occupy any part of the structure or site or another structure or site which it did not occupy at the time it became a nonconforming use, or in such a way as to displace any conforming use occupying a structure or site, except as permitted in this Section.
- B. No nonconforming use or structure shall be enlarged or extended so as to increase the nonconformity with respect to setbacks, height, density or number of units, distance between structures, parking or other requirements such as performance standards.
- C. Extension of hours or seasons of use, addition of new uses, and changes in character of the nonconforming use are considered to be extensions and are not permitted.
- D. Pursuant to Arizona Revised Statutes § 11-830, within any zoning district, subject to the granting of a conditional use permit, a nonconforming business use may expand if such expansion does not exceed one hundred percent of the area of the original business. Such expansions shall be limited to uses of the same basic nature and character. Expansion shall

be limited to the original parcel on which the use was located at the time it became nonconforming. For uses within a structure, the expansion shall be measured by floor area. For business uses not involving a structure, for example junk yards, truck yards, or contractors' yards, area shall be strictly construed to mean the square footage or acreage of the use at the time it became nonconforming.

#### Section 19.8: Repair, Maintenance, and Reconstruction

- A. Minor repairs and routine maintenance of property where nonconforming situations exist are permitted and encouraged. Major renovation, i.e. work estimated to cost more than 25% of the appraised value of the structure to be renovated, may only be done with the granting of a conditional use permit. Cost shall mean the fair market value of the materials and services necessary to accomplish the repair or maintenance.
- B. If a structure located on a parcel where a nonconforming situation exists is damaged to an extent of 50% or less of the appraised value of the damaged structure, then it may be repaired and replaced and the nonconforming use may be resumed, provided that restoration is started within one year and diligently pursued to completion. For damaged nonconforming signs, restoration must be initiated

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#### Section 19.8: Repair, Maintenance, and Reconstruction (Continued)

within three (3) months and completed within six (6) months. If the damage exceeds 50% or the structure is voluntarily razed or is required by law to be razed, the structure shall not be restored except in full conformity with the regulations for the zone in which it is located, and the nonconforming use shall not be resumed. Structure as used in this paragraph includes on-premise signs and billboards. Nonconforming structures used for single family residential purposes, if damaged to an extent exceeding 50% may be reconstructed and restored subject to the granting of a conditional use permit.

- C. For the purpose of paragraph B above, the extent of damage shall be based on the ratio of the estimated cost of restoring the structure to its condition prior to such damage or partial destruction to the estimated cost of duplicating the entire structure as it existed prior to the damage. Estimates for this purpose shall be reviewed and approved by the Director of Community Development or the Chief Building Official and shall be based on the minimum cost of construction in compliance with adopted building codes.

#### Section 19.9: Change in Use of Property Where a Nonconforming Situation Exists

- A. A change in use of property where a nonconforming situation exists to a principal use that is permissible in the zone in which the property is located shall be accomplished in the same manner as establishing the use on a vacant lot. Once conformity with this Ordinance is achieved, the property may not revert to its nonconforming status.

- B. If the change is to a permissible use, but all requirements of this Ordinance, for example property development and performance standards, cannot be met then the change may be allowed subject to the Board of Adjustment granting a variance for the waivers. In addition to other findings required for a variance, the Board must find that:
1. The change will not result in a violation of Section 19.7; and
  2. All of the requirements that can reasonably be met will be met. Compliance is not reasonably possible if compliance cannot be achieved without the addition of land or without moving a substantial structure that is on a permanent foundation. Mere financial hardship related to such requirements as paving a parking lot may not constitute grounds for granting a variance.
- C. A change from one nonconforming use to another principal use that is also nonconforming may be permissible with the granting of a conditional use permit. The permit may be granted if the findings in Section B above are met and if the proposed development will have less of an impact on the area and will be more compatible with the surrounding neighborhood than the use in operation at the time the permit is applied for. Applications for a change shall be restricted to the property, i.e. the specific parcel, on which the nonconforming use is located.

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**Section 19.10: Nonconforming Uses Authorized by Conditional Use Permits**

- A. Uses approved by conditional use permit which have become nonconforming because of a Zoning Ordinance text amendment or a zoning map change may continue until the expiration date of the permit. At that time the Planning and Zoning Commission may grant a use permit for renewal if all of the original conditions of approval have been met, even if the use is no longer a permitted or conditional use in the zoning district in which the property is located. The Commission may impose reasonable improvements to bring the property into closer conformity or to mitigate the use.

**Section 19.11: Abandonment and Discontinuance of Nonconforming Situations**

- A. Whenever a nonconforming use has been discontinued, or changed to a conforming use, for a consecutive period of 180 days, use of the structure or site thereafter shall be in conformity with the regulations for the zone in which the property is located.

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